



Office of Trade

Protest Webinar

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U.S. Customs and
Border Protection



Introduction

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Fall 2020 Protest Webinar



- All participants will be muted.
- Please save your questions until the end of the webinar as your question may be addressed in subsequent slides.
- Questions submitted through the webinar tool will be addressed in last 15 minutes of today's session.
- For any questions not answered or issues not covered, please send an email inquiry to ot-protest@cbp.dhs.gov.
- This presentation is not intended to replace previously provided formal guidance to the trade community, nor is it intended to constitute legal advice.
- Webinar Topics:
 - Trade Remedy protests
 - Outline of selected protest topics
 - Application for Further Review (AFR)
 - Center of Excellence and Expertise input & best practices
 - Accelerated Disposition & Court of International Trade (CIT) filings



Trade Remedy Protests

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Protest Key Points

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Governing Statutes and Regulations



- [19 USC 1514](#) Protest against decisions of Customs
- [19 CFR Part 174](#) Protest Regulations
- [19 USC 1515](#) Review of Protests
- [19 USC 1520\(d\)](#) Refunds and Errors for goods qualifying under FTA rules of origin
- [19 CFR Part 141.105](#) Voluntary deposit of additional duties



Submitting a Protest to CBP

- Protests may be submitted to CBP electronically or in paper form.
- All protest submitted to CBP electronically must be submitted through the Automated Commercial Environment (ACE).
- An individual must have a Protest Filer Account in ACE to submit a protest.
- Account request instructions can be found at <https://www.cbp.gov/trade/automated/news/protest>
- Protests should not be submitted to CBP through email or fax.

Creating a Protest in ACE



- The ACE Protest Module supports 514 Protest (19 U.S.C. 1514) or a 520(d) Post Importation Preference Claim (19 U.S.C. 1520).
- First step: once the protest type has been selected, input the lead entry summary number in the corresponding field.
 - This will autofill the Importer Number, Port Code, and Team Number fields for the protest.
- To add additional entries to the protest you can do so manually through the Add Additional Entry Numbers function, or you may upload a .txt file containing the entry numbers you wish to add.
 - Utilizing the Browse function in the Add Additional Entry Numbers function to locate and upload the desired file of entry numbers.
- ACE will perform a validation check to ensure the entry numbers exist in ACE.



Protest Party Definitions

Protestant Type and Protestant Number: identifiers for the party for whom the Protest is being submitted.

- The type selection is the party type you are entering (Importer, Filer, Surety, etc).
- The number is their actual identifier (IOR Number, Filer Code, Surety Code).
- This combination allows validation that a party exists in ACE, which is the system of record for all account data.

Protest Filer Type and Protest Filer Number: identifiers for the party who is actually filing the Protest.

- ACE requires selection of the filer type; however, as a trade user, ACE identifies you when logged into the system, and as such, will populate your Protest Filer number with the number used for login.

Substitute Party Type and Substitute Party Number: optional identifiers for a party to whom a notice of approval or denial should be sent (box 11 on the CF 19).

Refund C/O Number: optionally used if the refund needs to be sent to a separate, specified party.

- Input in this field should only be entered if there is a Customs Form 4811 Special Address Notification on file, and as such, is required to be an importer of record number.



Reason for Protest

- The Reason for Protest is the section of the protest where the filer explains, in detail, the issue at protest and what the filer has provided for substantiation of their claim.
- A clear and concisely written reason for protest that thoroughly explains the argument and substantiation of claim, nature and justification of the protest, is essential to a timely and accurate review.
- As this text box is limited in space, inputting “See attached documents” is acceptable and the reason for protest can be expanded on in a document(s) uploaded under the Upload Additional Documents section.
- Uploading of Additional Documents
 - All file types EXCEPT .tif, .tiff, and .txt can be uploaded.
 - The files can be no larger than 10MB.



Documents to Upload with your Protest

- Substantiating documents may differ by protest type (514 or 520(d) and may also differ for protest issue (exclusion, CBMA, FTA, etc.).
- Documentation may include the reason for the protest, amount of refund per entry, or citing any regulation or rule (ruling) in support of the entry changes.
- Documents such as invoices, mill certificates, packing lists, measurements, sketches, etc., may be included.
- Trade Remedy protests: the exclusion and refund should be provided citing the complete reason, Section, and tariff numbers involved, as well as descriptive information for the product.
- ALL documents to substantiate a claim should be uploaded at the creation of the protest or as soon as possible thereafter.



Protest Status Notifications

- Inputting your email address in ACE will alert you to status changes for the protest.
- Paper protest status updates are not sent, the decision notification is still required to be mailed to the protest filer.
- Once all required fields are input and you have uploaded any necessary documents, selecting Save and Continue will submit the protest to CBP.
- ACE will review the protest for certain validation and return an error message if any issues are found.
 - Ensuring the accuracy of entry numbers and/or importer of record numbers.



Amending your Protest

- A protest may be amended at any time prior to the expiration of the period within which the protest may be filed under 19 CFR §174.12(e).
- Amendments to protests follow the same timeline submission regulations as the protest itself, no later than 180 days after liquidation.
- The amendment may assert additional claims (adding an entry), pertaining to the administrative decision that is the subject of the protest; or may challenge an additional administrative decision (protesting classification as well as value).



Uploading Documents after you have Created a Protest

- To provide additional documents after the protest has already been created you will select 'Provide Supplemental Information' in ACE through the Action button and upload the necessary documents.
- You would upload documents after creating a protest because CBP requested additional documents or the documents to substantiate your claim were not uploaded when the protest was created.

Additional Arguments



- The presentation of additional grounds or arguments in support of a valid protest after the applicable protest period set forth in 19 CFR §174.12(e) has expired, see 19 CFR §174.28.
- In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest.



Application for Further Review Regulations and Ruling Directorate

Elizabeth Grant, Attorney

Entry Process and Duty Refunds Branch

Regulations and Rulings

CBP Office of Trade



Application for Further Review (AFR)

AFR alleges that the protesting party: (i) has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and (ii) has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

AFR includes a statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in 19 CFR §174.24 which justifies further review. A showing of facts that support the allegation of a criterion set forth in 19 CFR §174.24(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations would otherwise result in its denial.

Criteria for AFR



Generally, the criteria for further review requires that the decision against which the protest was filed:

- Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made at any port with respect to the same or substantially similar merchandise;
- Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts;
- Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or
- Is alleged to involve questions which the Headquarters Office, United States Customs Service, refused to consider in the form of a request for internal advice pursuant to § 177.11(b)(5) of this chapter.

Regulations & Rulings (R&R) Processing of AFR



- The Center determines whether AFR is met, and if so, routes the protest through ACE for R&R's assignment.
- R&R will assign the protest an HQ case number and attorney.
- After R&R issues its determination, R&R will upload the final decision in ACE and route the protest to the Center for further processing.
- 60 days from the date of decision, R&R will publish its decision on the Customs Rulings Online Search System, CROSS, available at: rulings.cbp.gov.



Request to Set Aside the Denial of Further Review (1515(c))

19 U.S.C. § 1515(c): Party argues that an AFR was “erroneously or improperly denied or was denied without authority for such action.”

- If appropriate, CBP may set aside the denial of AFR and void the denial of the protest.

Statutory filing requirements:

- Protesting party must file its request to set aside within 60 days after the date of the notice of the AFR’s denial.
- The request is filed with “the Commissioner of U.S. Customs and Border Protection.”
 - In practice, requests are sent to the Office of Trade, Regulations & Rulings.

CBP review of request:

- R&R will review the request based solely on the information before the Center at the time AFR was denied.
- CBP MUST decide the request in 60 days or the request will be considered denied.
 - Should the request be considered denied, the party can commence action in the Court of International Trade that arises out of the protest or AFR.



Best Practices

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“Best Practices” in Submitting a Protest

General Review of Protests (Exclusions to Trade Remedies)

- Almost 6 fold increase.
- Centers have taken a streamlined approach to processing protests.
- Accounts are handled by Teams within a Center
- Information submitted is critical to processing a protest

Centers handle process uniformly. No Center administratively handles protests differently

- Expectation of information is uniform across all Centers

Quality, not quantity

- Provide specific information to the items under protest rather than providing an entire catalog of items.

Logical grouping of entries/protest

- Group entries based on similar exclusions so that an import or entry specialist can vet that one issue and then address it in mass across all affected entries on that protest.

Information to substantiate protest

- Identification of the Federal Register Notice, 10-digit HTS (Chapters 1-97) and the 8-digit exclusion number (Chapter 99)
- Product specification showing picture, size measurements, weight, component make up, etc. and its listing on an invoice (eg, style numbers, product ID, etc.).



More “Best Practices” in Submitting a Protest

Information to help CBP process approve protests

- In general there are 2 types of proposed changes with 1 variation that is likely.
 - The entire entry summary line is requesting an exclusion
 - A classification change is being requested to the entire entry line and that entire line is also requesting an exclusion.
 - Only part of an entry line is requesting an exclusion (with or without a classification change)
- Spreadsheets and/or revised entry summary documents
 - For entire line changes, a spreadsheet can be easy to review.
 - For partial line changes with additional line breakouts, a “revised” entry summary document is likely to be more relevant.

Communication requests

- Contact information should be made available when a protest is filed. It should be up to date, identify a subject matter expert for the protestant and the protestant should be responsive.

One process does not fit all circumstances

- Different processes may require different information.
- Use the www.cbp.gov website as a resource for communicating with Center teams.



Requesting Void of Denial (Reconsideration) under 19 U.S.C. §1515(d)

- When a protest is “denied” or “denied in part,” the protestant has an opportunity to request that CBP reconsiders the denial or partial denial when it is made “contrary to proper instruction.
- The protestant has 90 days from the date of the denial to request reconsideration.
 - For electronically filed protests, the protestant may request “Void Denial” in the ACE Protest Module.
 - For paper filed protests, the protestant will submit a “written request” to the Port Director of the port where the paper protest was filed.
 - In both cases, the protestant must provide reasons as to why CBP’s denial or partial denial was contrary to proper instruction (e.g., CBP rulings, Court Cases, etc.)
- Reconsideration does not toll the time required to file a case before the Court of International Trade. That is still based on the original protest denial date. (180 days from the date of denial under 28 U.S.C. §2636). A void denial may be considered “moot” after the expiration of the time to file before the CIT.



Accelerated Disposition and CIT Filings

Paula Smith, Assistant Chief Counsel
Office of Chief Counsel



Requests for Accelerated Disposition of a Protest (19 U.S.C. § 1515(b), 19 C.F.R. § 174.22)

- A request for accelerated disposition of a protest may be filed at any time concurrent with or following the filing of a protest.
- Must be filed by registered or certified mail, even if the protest is filed electronically in ACE. If the protest is filed electronically in ACE, upload the request and the mailing receipt to the ACE protest record.
- If CBP does not deny or approve the protest within 30 days following the date of mailing, it is deemed denied on the thirtieth day following the mailing of the request.
- The filing of a request for accelerated disposition request does not *require* that CBP decide the protest within 30 days. If CBP does not decide the protest within 30 days of date of mailing of the protest, it will be denied by operation of law and the protestant's only recourse will be to file an action in the CIT.



Filing a Summons in the CIT

Challenging a Protest Denial

- Court of International Trade has jurisdiction over an action to contest the denial of a protest, in whole or in part, under 19 U.S.C. § 1515
- Summons must be filed within 180 days after:
 - Date of mailing of notice of denial of a protest under 19 U.S.C. § 1515(a), or
 - Date of denial by operation of law under 19 U.S.C. § 1515(b) following the filing of a request for accelerated disposition

Other Requirements for Filing in the CIT



- All “liquidated duties, charges, or exactions” must be paid prior to the commencement of the action (28 U.S.C. § 2637)
- New CBP Procedures under CIT Rule 73.1: Upon the filing of a summons, CBP files the protest and entry records electronically with the court
 - Effective for cases filed on or after April 23, 2018

Standard of Review



- Review in the CIT in a protest case is *de novo*, and additional evidence to support the protest claim may be presented

Thank you for participating!

- Question & Answer
- For additional information or questions contact ot-protest@.cbp.dhs.gov.
- Additional protest information: Protest for Trade Quick Reference Guide (QRG) <https://www.cbp.gov/document/guidance/ace-protest-trade-quick-reference-guide-qrg>
- For Center contact information: <https://www.cbp.gov/trade/centers-excellence-and-expertise-information/cee-directory>
- Additional Section 232 & 301 information: CSMS 42566154 (May 1, 2020)
<https://content.govdelivery.com/accounts/USDHSCBP/bulletins/289820a>
- Please follow CBP's Office of Trade on Twitter @CBPTradeGov.

